

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

|   |   |                         |
|---|---|-------------------------|
|   | X |                         |
| In reply to:                                  | : |                         |
|   | : | Chapter 11              |
| TOUCH AMERICA HOLDINGS, INC., <u>et al.</u> , | : | Case No. 03-11915 (KJC) |
| Debtors.                                      | : | Jointly Administered    |
|   | X |                         |
| ENTECH LLC,                                   | : |                         |
|   | : |                         |
| Plaintiff,                                    | : |                         |
|   | : |                         |
| -- vs. --                                     | : |                         |
|   | : | C.A. 04-1336-SLR        |
| WESTMORELAND COAL COMPANY, a                  | : |                         |
| Delaware Corporation, and                     | : |                         |
| WESTMORELAND MINING LLC, a Delaware           | : |                         |
| Limited Liability Company,                    | : |                         |
| Defendants.                                   | : |                         |
|   | X |                         |

**DEFENDANTS WESTMORELAND COAL COMPANY AND  
WESTMORELAND MINING LLC’S MOTION TO COMPEL**

Defendants Westmoreland Coal Company and Westmoreland Mining LLC (collectively “Westmoreland”), by and through their undersigned counsel, and pursuant to Federal Rules of Civil Procedure 37, hereby move this Court for an entry of an Order compelling plaintiff Entech LLC to respond to certain Westmoreland requests for production and to compel the disclosure of trial witnesses. The grounds for this motion are more fully set forth in Westmoreland’s opening brief in support of this motion, filed contemporaneously herewith.

As set forth in the attached certification, and pursuant to Federal Rule of Civil Procedure 37(a)(2) and District of Delaware Local Rule 7.1.1, Westmoreland made good faith efforts to

reach agreement with plaintiff on the matters set forth in this motion and accompanying opening brief in an effort to secure production of the documents and disclosure of the information without court action, but was unable to do so.

Pursuant to Federal Rule of Civil Procedure 37(a)(4), defendants respectfully request that the Court award defendants their reasonable costs and expenses, including attorneys' fees, incurred in connection with this Motion to Compel.

WHEREFORE, defendants Westmoreland respectfully request that the Court enter an Order granting this Motion to Compel. A proposed Order is attached.

Dated: June 1, 2005

Respectfully submitted,

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